

APPROVED 12-08-2004



**SCOTTSDALE BOARD OF ADJUSTMENT
3939 N. Drinkwater Boulevard
Kiva at City Hall
Scottsdale, AZ
October 6, 2004
6:00 PM
MINUTES**

PRESENT: James Vail, Chair
Terry Kuhstoss, Vice Chair
Jennifer Goralski, Board Member
Ernest Jones, Board Member
Carol Perica, Board Member
Neal Waldman, Board Member
Howard Myers, Board Member

STAFF: Donna Bronski
Kurt Jones
Keith Neiderer
Tim Curtis

CALL TO ORDER

The regular meeting of the Scottsdale Board of Adjustment was called to order by Chair Vail at 6:00 p.m.

ROLL CALL

A formal roll call confirmed members present as stated above.

APPROVAL OF MINUTES

APPROVED 12-08-2004 - bdf

1. August 4, 2004

Vice Chair Kuhstoss moved to approve the minutes as presented. Commissioner Perica seconded the motion. The minutes were approved as presented by a vote of seven (7) to zero (0).

REGULAR AGENDA

CHAIR VAIL explained the function of the Board of Adjustment and the constraints placed upon the Board by State law. He also explained the format for applicant testimony and public comment.

2. 12-BA-2004 Tuscana La Regia Lot 16, request approval for a variance to allow a 6-foot high wall within the required front yard setback at Lot 16 of Toscana. Located at 19058 N 95th Way. Celebrity Homes, Applicant.

MR. KEITH NEIDERER presented the case per the staff packet. He noted that staff had received only one inquiry asking for additional information on the variance request. Mr. Neiderer responded to questions from the Board Members.

BOARD MEMBER PERICA asked about the material proposed for the wall construction. Mr. Neiderer replied that masonry, or masonry with wrought iron would be used.

CHAIR VAIL inquired as to whether or not a test was conducted to determine any adverse impacts on vehicular safety. Mr. Neiderer stated that it had been determined that the wall would present no adverse impact on vehicular traffic.

MR. MARK FELLMAN, Celebrity Custom Homes, addressed the Board. He reviewed the four criteria and pointed out that the floodwall significantly reduces the backyard space. He referred to the size of neighboring homes and stated that the proposed 4500 square feet was in keeping with other homes in the area. Mr. Fellman referred to the odd shape of the lot and difficulties inherent in designing a home with adequate backyard space. He also pointed out that maintaining the 30-foot setback would result in a good deal of unusable dead space, and viewed the proposed 10-foot setback as an enhancement to the neighborhood.

MR. MARK KALLNER, property owner, reiterated that the size of the home was consistent with others in the sub division. He pointed out that the

variance request would allow them the benefit of a usable backyard, with some measure of privacy.

CHAIR VAIL asked for Board Member discussion of the request.

BOARD MEMBER MYERS pointed out that this case represented the second one relating to a large home being placed on a lot with size constraints. He stated that he was unable to agree that the special circumstances were not created by the owner, in light of the size and design of the home. He indicated that he could not support the variance request.

BOARD MEMBER WALDMAN concurred with Board Member Myers in that the criteria had not been met, and stated that he could not support the variance.

BOARD MEMBER GORALSKI stated that she agreed that only two of the four criteria had been met. She noted that Mr. Neiderer had presented a map showing that other properties in the area had to deal with the same constraints. She stated that she could not support the request.

VICE CHAIR KUHSTOSS stated that she felt the four criteria had not been satisfied, that the circumstances had been created by the owner and his agent, and that she would vote to deny the variance. She also commented that the proposed wall could potentially be detrimental to the neighborhood.

BOARD MEMBER PERICA agreed that the four criteria had not been met. She observed that the applicant should have been aware of the special circumstances when purchasing the property, and stated that she would not support the variance request.

BOARD MEMBER JONES stated that it was his understanding that a variance for a similar case had been approved, and that he would support this variance request in light of that precedent.

CHAIR VAIL commented that lot coverage ordinances could prevent many instances such as the request before the Board. He referred to the size of the home and the presence of the wash in the case before the Board. He also noted that the case mentioned by Board Member Jones had been denied. Chair Vail stated that although he understood the applicant's reasoning in seeking the variance, he was unable to support it in light of the failure to meet the four criteria

VICE CHAIR KUHSTOSS moved to deny case number 12-BA-2004. **BOARD MEMBER PERICA** seconded the motion. The motion passed unanimously by a vote of seven (7) to zero (0).

ADJOURNMENT

With no further business to discuss, the regular meeting of the Scottsdale Board of Adjustment was adjourned at 6:44 PM.

Respectfully submitted,

"For the Record" Court Reporters